PRE-APPEAL BRIEF REQUEST FOR REVIEW	**Docket Number:** P16580	

I hereby certify that this correspondence is being transmitted via the EFS-Web System to the USPTO on: December 4, 2008 Signature: /William Konrad/ Typed or Printed Name: William K. Konrad	**Application Number:** 10/663,026	**Filed:** September 15, 2003
	First Named Inventor: H. T. BEVERLY et al.	
	Art Unit: 2145	**Examiner:** William J. Goodchild

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached four (4) sheet(s).
     Note: No more than five (5) pages may be provided.

I am the:

☐ applicant/inventor

☐ assignee of record of the entire interest.
  See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
  is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
  Registration Number Registration No. 28,868

☐ attorney or agent acting under 37 CFR 1.34
  Registration number if acting under 37 CFR 1.34
  _____

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December 4, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required*.

Applicant(s):	H. T. BEVERLY et al.	Examiner	William J. Goodchild
Serial No.	10/663,026	Group Art Unit	2145
Filed	September 15, 2003	Docket No.	P16580
TITLE	METHOD, SYSTEM, AND PROGRAM FOR MANAGING DATA TRANSMISSION THROUGH A NETWORK		

PRE-APPEAL BRIEF REQUEST FOR REVIEW ARGUMENTS

Applicants request a pre-appeal brief review of the rejection of claims 1-5, 14-20, 26-30 and 39 as anticipated by Baratakke et al., (US Publication No. 2005/0036511), (hereinafter Baratakke) and the rejection of claims 6-13, 21-25 and 31-38 under 35 U.S.C. 103(a) as being unpatentable over Baratakke as applied to claims 1, 15 and 26 above, and further in view of Boyd et al., (US Publication No. 2004/0049580), (hereinafter Boyd)) in the Final Office Action dated September 4, 2008 ("Final Office Action").

Claim 1, for example, is directed to a "method for sending data, comprising: establishing an active connection adapted to send packets of data between a host and a destination; receiving from the destination a first window value representing a first quantity of data packets; sending packets of data from said host to said destination; receiving an acknowledgment from said destination for each packet of data received by said destination wherein said first window value represents a limit imposed on said host by said destination on the quantity of data packets sent from said host to said destination and lacking an acknowledgment of being received by destination; and limiting the number of packets sent by said host, but not acknowledged as received by said destination, to a second quantity of data packets less than said first window value wherein said second quantity represents a limit imposed by said host on the quantity of data packets sent from said host to said destination and lacking an acknowledgment of being received by destination and wherein said second quantity is a function of the number of active connections of the host."

It is the Examiner's position that the Baratakke reference shows "receiving from the destination a first window value representing a first quantity of data packets [paragraphs17-19]; … wherein said first window value represents a limit imposed on said host by said destination on the quantity of data packets sent from said host to said destination and lacking an acknowledgment of being received by destination [paragraphs 17-19]; and limiting the number of packets sent by the said host, but not acknowledged as received by said destination, to a second quantity of data packets less than said first window value [paragraph 22]." Paragraph 22 of the Baratakke reference appears to describe a "congestion window" said to be governed by congestion in the network in which congestion is a "condition of severe delay caused by an overload of datagrams at the switching points (e.g., at gateways or routers) resulting in dropping of packets." Accordingly, it is clear that the Examiner's citations to the Baratakke reference fail to teach or suggest a transmission window which is "a function of the number of active connections of the host" as required by claim 1. Instead, the transmission window cited by the Examiner appears to be governed by network congestion external to the host.

It is further the Examiner's position that:

Baratakke discloses there can be a plurality of connections [Baratakke, paragraph 17, lines 13-15] and that the number of packets sent is controlled due to a delay of packets on *the connections* [Baratakke, paragraph 22, lines 1-15], so it would be inherent that the reduced quantity is based on *the connections* that are experiencing a delay. [emphasis added]

The applicants respectfully disagree.

Although the Baratakke reference recognizes that the data processing network 102 may have "one or more connections and networks, including Internet 108," it is believed that *each* sliding window (as limited by a congestion window) of the Examiner's citation to the Baratakke reference applies to a *single* connection, not "the connections" as asserted by the Examiner. Wikipedia explains that a congestion window applies to a single connection between two places:

In TCP, the congestion window determines the number of bytes that can be outstanding at any time. This is a means of stopping the link between two places from getting overloaded with too much traffic. The size of this window is calculated by estimating how much congestion there is between the two places. The sender maintains the congestion window. When a connection is set up, the congestion window is set to the maximum segment size (MSS) allowed on that connection. If all segments are received and the acknowledgements reach the sender on time, then the window size is doubled.

The Window keeps growing exponentially till either a timeout occurs or till the receiver reaches its limit. If a "timeout" occurs, the window size is halved.
http://en.wikipedia.org/wiki/Congestion_window

Thus, it is believed that the congestion window for a particular connection is limited only by the congestion experienced by that connection between two places. The Examiner has cited no portion of the Baratakke reference which in any manner teaches or suggests that the congestion window for a particular connection is a "function of the number of active connections of the host."

Furthermore, it is believed that the network congestion which affects the size of the congestion window of Baratakke is *external* to the host and is *not* "a function of the number of active connections of the host" as required by claim 1. Accordingly, it is clear that Examiner's citations to the Baratakke reference fail to teach or suggest a transmission window which is "a function of the number of active connections of the host" as required by claim 1.

It is respectfully submitted that the deficiencies of the Examiner's citations to the Baraatakke reference are not met by the Examiner's citations to the Boyd reference. Independent claims 15 and 26 may be distinguished in a similar fashion.

The rejection of the dependent claims is improper for the reasons given above. Moreover, the dependent claims include additional limitations, which in combination with the base and intervening claims from which they depend provide still further grounds of patentability over the cited art. It is therefore respectfully submitted that the rejection of the claims should be withdrawn.

The Examiner has made various comments concerning the anticipation or obviousness of certain features of the present inventions. Applicants respectfully disagree. Applicants have addressed those comments directly hereinabove or the Examiner's comments are deemed moot in view of the above response.

Conclusion

For all the above reasons, Applicant submits that the pending claims are patentable. Should any additional fees be required beyond those paid, please charge Deposit Account No. 50-0585.

The attorney of record invites the Examiner to contact him at (310) 553-7970 if the Examiner believes such contact would advance the prosecution of the case.

Dated: December 4, 2008

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